For the Northern District of California

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAMONE C. SIBLEY, Plaintiff, vs.) No. C 04-00348 JW (PR)) ORDER OF DISMISSAL
M. MEYER, Defendant.	

Plaintiff, a California prisoner currently incarcerated at Salinas Valley State Prison ("SVSP"), filed a pro se civil rights action under 42 U.S.C. § 1983, against defendant Correctional Officers M. Meyer ("Meyer") and R. D. Wysinger ("Wysinger"), SVSP employees, for use of excessive force. Plaintiff's original complaint was dismissed with leave to amend. Plaintiff filed an amended complaint on March 8, 2005, and, with leave of the Court, a second amended complaint on March 9, 2006. On June 17, 2007, the Court found that the second amended

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complaint, when liberally construed, stated a claim against Meyer. In that same order, the Court directed the clerk to prepare the summons for service of the second amended complaint upon Meyer, and the United States Marshal to effectuate such service. The Clerk prepared the summons for service of Meyer at SVSP, where plaintiff indicated he was located. The Marshal returned the summons unexecuted because Meyer was not located at SVSP.

In cases wherein the plaintiff proceeds in forma pauperis, the "officers of the court shall issue and serve all process." 28 U.S.C. § 1915(d). The court must appoint the Marshal to effect service, see Fed. R. Civ. P. 4(c)(2), and the Marshal, upon order of the court, must serve the summons and the complaint, see Walker v. Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994). Although a plaintiff who is incarcerated and proceeding in forma pauperis may rely on service by the Marshal, such plaintiff "may not remain silent and do nothing to effectuate such service"; rather, "[a]t a minimum, a plaintiff should request service upon the appropriate defendant and attempt to remedy any apparent defects of which [he] has knowledge." Rochon v. Dawson, 828 F.2d 1107, 1110 (5th Cir. 1987).

Here, plaintiff's second amended complaint has been pending for over 120 days, and thus, absent a showing of "good cause," is subject to dismissal without prejudice. See Fed. R. Civ. P. 4(m). On September 6, 2007, the Court ordered plaintiff to either "effect service on defendant Meyer, or provide the Court with an accurate current location such that the Marshal is able to effect service." The Court warned plaintiff that his failure to do so would result in the dismissal of plaintiff's claims against Meyer without prejudice, pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. Plaintiff has not responded to the Court's September 6, 2007

¹Claims against Wysinger were dismissed for failure to state a cognizable claim for relief.

Order. Plaintiff has not provided sufficient information to allow the Marshal to			
locate and serve Meyer. Consequently, the instant action is hereby DISMISSED			
without prejudice, pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.			
The Clerk shall close the file and terminate any pending motions.			
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DATED:	October 30, 2007	James Ubse	
		JAMES WARE United States District Judge	